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REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested in view of the foregoing amendments and discussion presented herein.

1. **Rejection of Claims 1-35 under 35 U.S.C. § 102(e).**

Claims 1-35 were rejected under 35 U.S.C. § 102(e) as being anticipated by Reisman et al. (U.S. Published Application No. 2003/0229900).

Claims 1, 14, 26 and 35 are the independent claims in this application. Each of these claims recites an apparatus or method wherein a stream format or stream source for the streaming content is selected without breaking an established protocol connection.

After carefully considering the grounds for rejection, the Applicant respectfully submits that the Examiner has made a number of incorrect statements regarding the Reisman reference and that the Examiner may not fully understand what is being disclosed both in the Applicant's claims and the Reisman reference.

First, it should be recognized that the object of the Reisman invention is generally found in the title, *"Method and Apparatus For Browsing Using Multiple Coordinated Device Sets"*. The abstract describes how the system will *"allow a user and/or and author to control what resources are presented on which device sets (whether they are integrated or not), and provide for coordinating browsing activities to enable such a user interface to be employed across multiple independent systems"*. It appears that the system of Reisman basically allows routing streams to different devices in a home entertainment system, or similar, using conventional communication protocols, wherein the user can execute browsing functions.

Paragraph [0027] of Reisman makes a succinct statement about what is being sought, as follows. *"Providing the desired flexibility can be viewed in terms of three interrelated issues, one of structuring an effective and flexible multimachine user interface (MMUI) for browsing by a user, one of providing methods (such as markup) for the resource creator/author/producer to aid in exploiting that MMUI, and one of*

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implementing such an interface on a wide range of hardware and software, including systems for which such usage may not be a primary mission (including both new systems and legacy systems)."

Reisman utilizes conventional communication protocols to implement an MMUI so that browsing can be performed across sets within an environment, such as a home network. Reisman does not, however, teach an apparatus or method wherein a stream format or stream source for the streaming content is selected without breaking an established protocol connection as recited in the Applicant's claims.

Secondly, that a single system or multiple systems can share the same connections is not related to that which is described in the instant application, and in particular the claims therein. Separate devices of necessity utilize separate software and protocol stacks, ergo it would not be possible to maintain a logical connection over a physical communication medium when changing the source from one device to the other. Even supporting multiple connections on a single device in Reisman there is no means disclosed for performing switching of sources or formats within the low level communication programming, only mechanisms for performing conventional switching in which a new connection must be established to change either format or source. This is not at all surprising as only conventional transport mechanisms are described by Reisman.

There is simply no teaching whatsoever within the Reisman reference which can be relied upon for considering anything aside from conventional communication transport mechanisms. Reisman does not teach an apparatus or method wherein a stream format or stream source for the streaming content is selected without breaking an established protocol connection as recited in the Applicant's claims

Thirdly, the switching means of Reisman does not utilize any techniques that anticipate the mechanism of low level source or format switching taught within the instant application. Nothing has been brought out by the Examiner referencing such an aspect in the Reisman reference, while Applicant was also similarly unable to find any

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such elements taught by Reisman. In contrast to the instant application, Reisman utilizes conventional stream switching, wherein communications are established, such as a communication link wherein the software comprises a full protocol stack maintained between a source and destination.

Reisman simply does not disclose any mechanisms for maintaining a connection intact with portions of the protocol stack still in operation while supporting a switch of format. Reisman does not teach an apparatus or method wherein a stream format or stream source for the streaming content is selected without breaking an established protocol connection as recited in the Applicant's claims

It is well settled that, in order for a rejection under 35 USC 102 to be properly made, the cited reference must teach all of the elements of the rejected claim. In the case of the Applicant's rejected claims, the rejection is improper because Reisman does not provide any teaching which comports to changing formats without establishing a new logical connection (not to be confused with physical connectivity). Therefore, the Examiner has not made out a *prima facie* case of anticipation.

Turning to specifics for each independent claim, the Examiner's grounds for rejection are improper for the following additional reasons.

(a) Claim 1. In support of the rejection of Claim 1, the Examiner has equated the preamble of Claim 1 to the system of Reisman in relation to Figs. 1, 2A and 2B and Paragraph 98. However, Reisman clearly does not describe an apparatus for changing the format or source over a communications link without breaking the communications link. With regard to the switching function, it is readily apparent Reisman utilizes conventional switching which requires that the traffic stream be broken and communication reestablished with the new source (or format); there are no teachings from Reisman that indicate otherwise. There is no discussion in Reisman at all about implementing format changes or switching within the low level stream communication programming.

In the instant application, a "communications link" is described in the

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specification as a logical communication pathway being established from software in a first system to software within a display terminal or other second system device. Data passes through this communications link in response to the harmonious operation of transport software layers on both sides of a physical communications channel. Forming a communications link requires that a physical channel exist (typically always present, unless it is a wireless connection) and establishing logical connectivity between at least the transport layers on each end of the physical channel. As these logical connectivity aspects are well known in the art, and because the instant application deals with only these software aspects of the communications link, it seems unnecessary for the specification to distinguish these logical aspects from the physical connectivity aspects.

According to conventional communication link operation, a communication link is broken as a prerequisite to running a different program or changing system or program configuration and so forth. The new connection can then be established with a different source configuration and/or format selected outside of the low level transport layer. Therefore, the "breaking of a communication link" as recited in the instant application does not entail a discontinuity in the conductive path (e.g., in response to cutting the wire, physical disconnection, or an electrical switching means), but instead addresses the logical connectivity established when communication are established between transport software components on either side of the connection.

It is important to note that Reisman teaches conventional communication link connections in which the logical connection must be broken and a new connection established that then supports the new source or format. Toward assuring a proper interpretation of the instant application based on the specification, Claim 1 has been amended, with the specific changes being described at the end of the discussion relating to Claim 1.

Figure 1 of Reisman shows physical connections between a TV, a PC and a PDA/Phone with network connectivity and a local storage device. The associated text describes this (top portion of paragraph 0098) as *"A number of typically independent*

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systems are represented (having associated device sets not shown here in detail), including TV or ITV system 130, PC 140, and PDA and/or phone 150, and the like."

Figure 2A and 2B of Reisman illustrate controllers having multiple input connections which can be selected. None of these illustrations provide any teaching or indication of changing formats or source within established connections, without breaking the connection.

The Examiner also refers to paragraph [0098] of Reisman as support for the rejection - the later portion of paragraph [0098] is as follows: *"These systems may connect to each other and the outside world via a home network or LAN (local area network) or hub 128, which may use wired and/or wireless technology. Auxiliary services may also be provided by a home gateway server, which may be combined with the LAN, STB, PC, or other device capable of acting as a server, and with other service components. External connections may be made directly from a single system, as shown for cable 122 connecting to the TV (STB), but may preferably be connected to a home network to facilitate shared use by multiple systems, as shown for the connection to the Internet 124, and connection to wireless network 126 (which could also be an Internet connection, such as using Mobile IP). These external connections provide access to various servers and other sources for a variety of sources of content and connectivity 110, which may include broadcast, satellite, and cable TV, video on demand, IPTV, streaming media, Web content, wireless portals, transaction servers, and the like."*

The above portion of Reisman relied upon by the Examiner only indicates that communications can be switched between different sets and can support different streaming formats, both aspects of which are well established.

The Examiner, however, erroneously contends that Reisman provides support for *"allowing the format or source of a digital video stream to change without breaking the communications link to the video display device"*, to which the Examiner directs attention to paragraph [0100] and [0122]. The Examiner errs here in not disclosing

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what portions of these paragraphs supposedly equate to the claimed element, and in misinterpreting these paragraphs which contain no teaching whatsoever which comports to this aspect of the instant application.

Nothing is found in either paragraph [0100] or [0122] to provide support for any such teaching within Reisman of changing source or format without breaking the communications link. These paragraphs serve only to indicate that a device can support multiple device sets. There is not even description within the Reisman reference about a source control library, streaming library, or equivalents, as discussed with regard to Applicant's FIG. 1A - 1B. It should be readily recognized that unless at least a portion of the same communication streaming routines continue to run, the connection would be dropped. There is nothing taught by Reisman of a means for switching streaming video protocol formats without breaking the communications link.

As described above, one must understand that the "communication link" as recited in the Applicant's claims is a logical link herein established between software on a first device which is communicating data to software on a second device such as over a network; NOT a physical link such as would be 'broken' by cutting it with a pair of wire cutters.

FIG. 1A - 1B of the instant application show clearly how the format or source of video stream is changed without breaking the communications link. Applicant's invention illustrates the source control module 12 with programming for a source selection routing module 28 for changing source inputs and a streaming controller 14 for changing the output formats between multiple streaming protocols in a streaming library 16 (e.g., RTSP/RTP 44, HTTP 46, and UDP 48).

Although Claim 1 is clearly not anticipated by the reference, the Applicant has amended Claim 1, to further distinguish what is meant by "*without breaking the communications link*" by adding the phrase "while preserving the transport portion of the communications link".

It is well settled that for anticipation under 35 USC 102, the anticipating

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reference must show all the elements of the claim. The Reisman reference cannot be equated to the recited aspects of Claim 1, wherein Reisman can not be considered to anticipate the teachings of the instant application as recited in Claim 1.

Therefore, as Reisman does not anticipate Claim 1, the Applicant respectfully requests that the rejection of Claim 1, and the claims which depend therefrom, be withdrawn.

Claim 14. Independent Claim 14 describes an apparatus for accommodating a change of digital streaming formats or sources in a video server system.

The rejection indicates that Reisman includes a *"source control library"* but does not indicate where this is found. The only library mentioned by the Examiner is that *"library for management"* mentioned with regard to Claim 2.

However, a close reading of Reisman failed to locate the term *"source control library"* or anything which comports to a *"source control library"* as that term would be generally understood in the art. Furthermore, the ONLY mention of library found in the relied upon art is a *"media asset management/library/archive"* as found in paragraph [0214]; and *"might include services as an entertainment portal, EPG, DVR-style library or archive manager"* as recited in paragraph [0356]. It is obvious that neither of these relate to programmatic elements which can be selectively executed for changing the source or communication protocol aspects within the streaming communication.

The problem with the support for the rejection still remains that Reisman does not describe any teachings whatsoever with regard to making a video source or video format change without changing the connection. Reisman DOES NOT EVEN disclose any implementation details for a streaming controller, and especially does not disclose a streaming controller with multiple streaming modules from a streaming library which allow changing the stream source or format without changing the connection. Consequently, since Reisman does not disclose any implementation details about new transport mechanisms it necessarily can be viewed as utilizing existing transport techniques.

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The novelty in Reisman is not in the low level handling of streaming traffic. Reisman operates according to conventional streaming traffic in a manner described in the background of the instant application at paragraph [0007]: *"Current practice requires the entire video content stream (protocols, software modules, and/or the "stacks") to be torn down and rebuilt whenever source selection changes."* No teachings have been shown from Reisman which disclose any low level stream processing which is contrary to conventional stream processing. The bulk of Reisman embodiments describe multiple devices, which by definition would have their own protocol stack and therein could not perform source or format changing without breaking the connection.

The reference relied upon under 35 USC 102 does not teach all the elements of Claim 14 and as a result cannot be considered as an anticipatory reference.

Therefore, as Reisman does not anticipate Claim 14, the Applicant respectfully requests that the rejection of Claim 14, and the claims which depend therefrom, be withdrawn.

Claim 26. Independent Claim 26 recites a method for managing video streams provided by a home video server.

One clear problem with the rejection of Claim 26 is that the step of *"maintaining the streaming protocol connection with the network display terminal when a second stream source is selected"*, does not comport to anything described within the Reisman reference. Reisman does not even provide any low level communications programming into which this aspect of Applicant's invention COULD be implemented. As described with regard to Claim 1 and Claim 14, the sections of Reisman relied upon only disclose conventional forms of switching and format changes which require establishing a new connection (logical not physical connection).

Claim 26 also clearly describes low level communication steps including a packetizing step, which also is not described in Reisman. Examiner refers to paragraph [0600] of Reisman for support of the packetizing step, however, this paragraph only

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teaches that the stream can be communicated with any format or protocol, and that IP packets can be sent through at least one of the protocols. This is not equivalent to a packetizing step for the first source within the set of low level communication steps.

There is no low level communications programming described within Reisman and more particularly no selection of a streaming protocol from a library of streaming protocols (see paragraph [0015] of instant application). Not surprisingly, Reisman describes nothing for maintaining a connection when a second stream source, or format, is selected.

Considering the above, it will be recognized that the Reisman reference relied upon under 35 USC 102 does not teach all the elements of Applicant's Claim 26 and thus cannot be considered to anticipate Claim 26 of the instant application.

Although Claim 26 is clearly not anticipated by the reference, Applicant has amended Claim 26 to include clarifying the meaning of *"maintaining the streaming protocol connection"* by adding *"and preserving the transport portion of the streaming connection"*. In addition Claim 26 was amended to add the aspect of selectively changing transport stream format so that this aspect, which is recited in Claim 1 and Claim 14, is also recited in method Claim 26.

Therefore, as Reisman does not anticipate Claim 26, the Applicant respectfully requests that the rejection of Claim 26, and the claims which depend therefrom, be withdrawn.

Claim 35. Independent Claim 35 describes the elements within a home video server system.

Examiner has rejected Claim 35 *"for the reasons given in the scope of claims 1-13"*. However, as has been discussed there is clearly no teaching within the relied upon Reisman reference for changing source or format without breaking the connection, or in reference to Claim 35 Reisman does not disclose *"means for maintaining an established streaming protocol connection with the network display terminal when the stream source or format changes"*.

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The present invention provides switching and format changing aspects within low level transport functionality which allows source and format switching without breaking the logical connection and reestablishing it from a different source or with different format as is performed conventionally, as in Reisman. The importance of this aspect is clearly stated in the instant application, such as at paragraph [0034]: *"It is to be understood that the present invention separates the resources that comprise the stream source from the resources that maintain the transport connection to the client display. This arrangement allows for the format and resources that make up a content stream to change without breaking the connection to a client display device, e.g., an NDT 20. The connection to the NDT 20 can be maintained independent of the resources required to produce the stream or the format of the stream itself. It is to be further understood that the present invention creates a separately managed and sustained transport connection to each of the clients of the home media server 50. This connection can be maintained while the source formats and resources needed to package data for the client can change."*

Since Reisman does not disclose any means for maintaining an established streaming protocol connection when the stream or format changes it cannot therefore anticipate Claim 35.

Although Claim 35 is clearly not anticipated by the reference, Applicant has amended Claim 35 to clarify what is meant by *"maintaining an established streaming protocol connection"* by stating *"and preserving a transport portion of the streaming protocol connection"*. This assures that no confusion can exist between logical connectivity in which a transport portion is maintained according to the instant application and which is not maintained in a conventional system, and physical connectivity which is generally maintained in many physical device configurations regardless of source feed or format.

Therefore, as Reisman does not anticipate Claim 35, Applicant respectfully requests that the rejection of Claim 35 be withdrawn.

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Claims 2-13, 15-25 and 27-34. Dependent Claims 2-13, 15-25 and 27-34 should be considered *a fortiori* allowable in view of the patentability of their respective base claims.

Applicant takes this opportunity, however, to point out a number of errors that have arisen with regard to the support provided for these rejections.

Claim 2. Dependent Claim 2 describes the means for changing the format or source of a digital video stream without breaking the communications link to the video display. Within this means a source control library and streaming library are connected by a source controller. Examiner has improperly equated this to teachings within Reisman which also happen to contain the word "library". As the library elements found in Reisman are content databases or content management oriented (a "*media asset management/library/archive*" as found in paragraph [0214]; and "*might include services as an entertainment portal, EPG, DVR-style library or archive manager*" as recited in paragraph [0356]) and do not contain low level transport related programming and more particularly programming specific to performing the changing of source or format without breaking the connection, they have no negative bearing on patentability of the instant application.

Claims 3-13, 15-25 and 27-34. Without going into great detail, the majority of the dependent claims have also been subjected to significant misinterpretation of the Reisman teachings. Typically, the very specific recitations in Applicant's claims have been taken out of context and then generalized to something in Reisman which is not equivalent, in many cases only the keywords, or portions thereof, were found to be the same or similar.

Therefore, Applicant respectfully requests that the rejections of these dependent claims be immediately withdrawn.

2. Claims 1-35 are nonobvious.

Nor would the subject matter of Claims 1-35 be obvious to a person having ordinary skill in the art in view of Reisman. Nothing in the Reisman reference suggests,

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teaches or provides motivation for creating a means for changing sources and formats without breaking the communications link and while preserving the transport portion of the streaming connection. Applicant describes low level communication programming for performing this means as recited in the claims. Reisman does not even disclose low level communications transport mechanisms, but uses existing mechanisms in creating a higher level construction, specifically an MMUI. Nor is there any suggestion, teaching or motivation which could be derived from that reference which would cause a person having ordinary skill in the art to so modify Reisman's MMUI to perform these low level packet communication aspects. There does not even exist within the Reisman reference teachings of any such low level transport mechanisms upon which combinations can be constructed toward obviating Applicant's claims.

Therefore, since there is no suggestion, teaching or motivation which can be found in the reference from which a person having ordinary skill in the art would find it obvious to modify the MMUI of Reisman to correspond to that described in the Applicant's claims, Claims 1-35 recite structure, and/or steps which are patentable over the cited references for purposes of 35 U.S.C. § 103.

3. Traversal of Rejection of Claim 1 and 35; *In re Donaldson*.

The Applicant respectfully traverses the grounds for rejection, and cites *In re Donaldson*, 16 F.3d 1189, 1193 (Fed. Cir. 1994)(en banc) as the basis for the traversal. Claims 1 and 35 are written in means plus function form pursuant to 35 U.S.C. §112, sixth paragraph, and therefore, must be interpreted during examination under *In re Donaldson*.

In rejecting Claims 1 and 35, as well as the claims that depend therefrom, the Examiner made no specific fact findings as to the scope of equivalents for the means plus function elements in the claims. Instead, the Examiner appears to have followed the provisions of MPEP § 2183 ("Making a Prima Facie Case of Equivalence"), which states:

If the examiner finds that a prior art element performs the function specified in

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the claim, and is not excluded by any explicit definition provided in the specification for an equivalent, the examiner should infer from that finding that the prior art element is an equivalent, and should then conclude that the claimed limitation is anticipated by the prior art element. The burden then shifts to applicant to show that the element shown in the prior art is not an equivalent of the structure ... disclosed in the application. *In re Mulder*, 716 F.2d 1542, 219 U.S.P.Q. 189 (Fed. Cir. 1983). No further analysis of equivalents is required of the examiner until applicant disagrees with the examiner's conclusion, and provides reasons why the prior art element should not be considered an equivalent.

While the Examiner appears to have attempted to follow the provisions of MPEP §2183, albeit lacking specificity of functional equivalence in the relied upon reference, such provisions are contrary to Federal Circuit law. The Federal Circuit has held that an examiner "construing means-plus-function language in a claim must look to the specification and interpret that language in light of the corresponding structure described therein, and equivalents thereof," *In re Donaldson*, 16 F.3d 1189, 1193 (Fed. Cir. 1994)(en banc), and in so ruling expressly denied that "the PTO is exempt from this mandate." *Id.* The Federal Circuit added that it was specifically overruling any precedent that suggested or held to the contrary. *Id.* at 1193-94. In response to the PTO's argument that the court's ruling conflicted with the principle that a claim should be given its broadest reasonable interpretation during prosecution, the Federal Circuit held that the Donaldson decision was setting "a limit on how broadly the PTO may construe means-plus-function language under the rubric of 'reasonable interpretation.'" *Id.* at 1194. In other words, an examiner's claim interpretation is not "reasonable" if it is not based on the specification's description of the implementation of the means element of the claim. The court then said, "Accordingly, the PTO may not disregard the structure disclosed in the specification corresponding to such [means-plus-function] language when rendering a patentability determination." *Id.* at 1195.

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Here, as in *Donaldson*, the Examiner is required by statute to look to the Applicant's specification and construe the "means" language as referring to corresponding means disclosed in the specification and equivalents thereof." See *id.* at 1195. However, the Examiner did not construe the means language of these claims. Nor did the Examiner find, on the basis of specific facts of record here, that the means disclosed in the Applicant's specification were equivalent to that of the cited references. Instead, as prescribed by MPEP §§ 2183-84, the Examiner simply presumed equivalence. The presumption methodology used here, which the MPEP prescribes, clearly conflicts with the requirements of the Federal Circuit's *Donaldson* decision. The approach taken by the Examiner in this case also conflicts with *In re Bond*, 931 F.2d 831 (Fed. Cir. 1990).

The very point of these cases is that, in this context, limitations from the specification control the interpretation of the claim. Under §112, paragraph 6, a means-plus-function element of a claim must be construed to mean that which is disclosed in the specification and its equivalents. In *Donaldson*, the Federal Circuit said that "our holding does not conflict with the general claim construction principle that limitations found only in the specification of a patent or patent application should not be imported or read into a claim." In other words, the court was saying that a §112, paragraph 6 "means" element does not need to be "imported or read into" a means-plus-function claim because the specification's limitations and their equivalents are already in the claim by virtue of §112, paragraph 6's command. Thus, the Federal Circuit said (16 F.3d at 1195): "What we are dealing with in this case is the construction of a limitation already in the claim in the form of a means-plus-function clause and a statutory mandate on how that clause must be construed."

Based on the foregoing, the Applicant respectfully submits that the rejection of Claims 1 and 35, as well as the claims that depend therefrom lacks proper foundation and that the rejection should be withdrawn. Those claims, each of which include means plus function limitations, should have been interpreted in view of the

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specification as required by *In re Donaldson*. If those claims had been so interpreted, they would have been allowable since the cited references do not anticipate or render obvious by way of teaching, suggestion, motivation or incentive, the subject matter recited in those claims.

4. Amendment of Specification.

Paragraphs [0007] and [0012] were amended to correct typographical errors, specifically adding a "was" to now read "*this method was adopted*", and removing a duplicative "*disk drive*" to now read "*and a hard disk drive ~~disk drive~~*".

A number of paragraphs (paragraphs [0020] and [0022] - [0030]) were amended to correct typographical errors found while preparing this response. One error found in a number of paragraphs was that the release of the drawings sent with the application had split original FIG. 1 into FIG. 1A and FIG. 1B, wherein it was proper to correct all references to "*FIG. 1*" in the specification to now read "*FIG. 1A - 1B*".

The amendments to the specification do not constitute added disclosure and serve only to correct and clarify the existing disclosure. Applicant apologizes for any inconvenience which these errors may have caused the Examiner.

5. Amendment of Claims 1, 14, 26 and 35.

Claims 1, 26 and 35. These independent claims were amended to clarify that the claims are describing "*breaking the communications link*", or "*maintaining the streaming protocol connection*" or "*maintaining an established streaming protocol connection*", respectively, with regard to a logical connection and not the physical hardware of the connection. Specifically the claims were amended to include the additional qualifier of "*preserving the transport portion of the communications link*", "*preserving the transport portion of the streaming connections*" and similar wording.

Support for this clarification is found throughout Applicant's specification, including the transition from the invention background of paragraph [0009]:
"*Accordingly, there is a need for a system and method for preserving the transport*

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portion of the client streaming connection as well as other system resources across stream source selections. The present invention satisfies that need, as well as others, and overcomes deficiencies of prior approaches."

Claim 14. Independent Claim 14 was amended to clarify wording of the nature of the connection to the network display terminal. In particular this portion of the claim was amended to recite: "*wherein a streaming connection, established between a network display terminal...*". The term "*streaming*" is already used elsewhere in the claim in relation to the video elements in the system, while the term "*established*" simply relates that the connection exists in response to its being established, also inferring that it is not describing an aspect of physical connectivity.

Claim 2. Dependent Claim 2 was amended to remove an extra "*and*" between clauses to improve readability.

6. Amendments Made Without Prejudice or Estoppel.

Notwithstanding the amendments made and accompanying traversing remarks provided above, Applicant has made these amendments in order to clarify aspects of the claims and toward expediting allowance of the currently pending subject matter. However, Applicant does not acquiesce in the original ground for rejection with respect to the original form of these claims. These amendments have been made without any prejudice, waiver, or estoppel, and without forfeiture or dedication to the public, with respect to the original subject matter of the claims as originally filed or in their form immediately preceding these amendments. Applicants reserve the right to pursue the original scope of these claims in the future, such as through continuation practice for example.

7. Conclusion.

Based on the foregoing, Applicant respectfully requests that the various grounds for rejection in the Office Action be reconsidered and withdrawn with respect to the arguments presented herein, and that a Notice of Allowance be issued for the present application to pass to issuance.

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In the event any further matters remain at issue with respect to the present application, the Applicant respectfully request that the Examiner please contact the undersigned below at the telephone number indicated in order to discuss such matter prior to the next action on the merits of this application.

Date: 8/1/05

Respectfully submitted,



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